

**Introduced by Senator Liu**

February 16, 2011

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An act to amend Section 243 of the Penal Code, relating to battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as amended, Liu. Battery: security officers and custodial officers.

Existing law ~~makes~~ *establishes* the crime of battery ~~punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. When a battery is committed against specified persons, including, among other persons, a custodial officer, firefighter, or emergency medical technician, and any one of several specified public safety officers, or a physician or nurse rendering emergency medical care, when the person committing the offense knows or reasonably should know that the victim is such a person, the battery. The crime~~ is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. ~~When a battery is committed, and the person committing the offense knows or reasonably should know that the victim is such a person, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than \$2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or 2 or 3 years when an injury is not inflicted on the victim.~~

This bill would add security officers and custody assistants to those lists of persons against whom the commission of a battery ~~will result~~

~~in-enhanced~~ that does not result in an injury to the victim will be punishable by the penalties described above. The bill would define a security officer and a custody assistant for purposes of these provisions, as specified. Because the bill would expand the scope of *an* existing ~~crimes~~ *crime*, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 243 of the Penal Code is amended to  
2     read:  
3     243. (a) A battery is punishable by a fine not exceeding two  
4     thousand dollars (\$2,000), or by imprisonment in a county jail not  
5     exceeding six months, or by both that fine and imprisonment.  
6     (b) When a battery is committed against the person of a peace  
7     officer, custodial officer, firefighter, emergency medical technician,  
8     lifeguard, security officer, custody assistant, process server, traffic  
9     officer, code enforcement officer, or animal control officer engaged  
10    in the performance of his or her duties, whether on or off duty,  
11    including when the peace officer is in a police uniform and is  
12    concurrently performing the duties required of him or her as a  
13    peace officer while also employed in a private capacity as a  
14    part-time or casual private security guard or patrolman, or a  
15    nonsworn employee of a probation department engaged in the  
16    performance of his or her duties, whether on or off duty, or a  
17    physician or nurse engaged in rendering emergency medical care  
18    outside a hospital, clinic, or other health care facility, and the  
19    person committing the offense knows or reasonably should know  
20    that the victim is a peace officer, custodial officer, firefighter,  
21    emergency medical technician, lifeguard, security officer, custody  
22    assistant, process server, traffic officer, code enforcement officer,  
23    or animal control officer engaged in the performance of his or her  
24    duties, nonsworn employee of a probation department, or a  
25    physician or nurse engaged in rendering emergency medical care,

1 the battery is punishable by a fine not exceeding two thousand  
2 dollars (\$2,000), or by imprisonment in a county jail not exceeding  
3 one year, or by both that fine and imprisonment.

4 (c) (1) When a battery is committed against a custodial officer,  
5 firefighter, emergency medical technician, lifeguard, ~~security~~  
6 ~~officer, custody assistant,~~ process server, traffic officer, or animal  
7 control officer engaged in the performance of his or her duties,  
8 whether on or off duty, or a nonsworn employee of a probation  
9 department engaged in the performance of his or her duties,  
10 whether on or off duty, or a physician or nurse engaged in rendering  
11 emergency medical care outside a hospital, clinic, or other health  
12 care facility, and the person committing the offense knows or  
13 reasonably should know that the victim is a nonsworn employee  
14 of a probation department, custodial officer, firefighter, emergency  
15 medical technician, lifeguard, ~~security officer, custody assistant,~~  
16 process server, traffic officer, or animal control officer engaged  
17 in the performance of his or her duties, or a physician or nurse  
18 engaged in rendering emergency medical care, and an injury is  
19 inflicted on that victim, the battery is punishable by a fine of not  
20 more than two thousand dollars (\$2,000), by imprisonment in a  
21 county jail not exceeding one year, or by both that fine and  
22 imprisonment, or by imprisonment in the state prison for 16  
23 months, or two or three years.

24 (2) When the battery specified in paragraph (1) is committed  
25 against a peace officer engaged in the performance of his or her  
26 duties, whether on or off duty, including when the peace officer  
27 is in a police uniform and is concurrently performing the duties  
28 required of him or her as a peace officer while also employed in  
29 a private capacity as a part-time or casual private security guard  
30 or patrolman and the person committing the offense knows or  
31 reasonably should know that the victim is a peace officer engaged  
32 in the performance of his or her duties, the battery is punishable  
33 by a fine of not more than ten thousand dollars (\$10,000), or by  
34 imprisonment in a county jail not exceeding one year or in the  
35 state prison for 16 months, or two or three years, or by both that  
36 fine and imprisonment.

37 (d) When a battery is committed against any person and serious  
38 bodily injury is inflicted on the person, the battery is punishable  
39 by imprisonment in a county jail not exceeding one year or  
40 imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

1 (3) Upon conviction of a violation of this subdivision, if  
2 probation is granted or the execution or imposition of the sentence  
3 is suspended and the person has been previously convicted of a  
4 violation of this subdivision and sentenced under paragraph (1),  
5 the person shall be imprisoned for not less than 48 hours in addition  
6 to the conditions in paragraph (1). However, the court, upon a  
7 showing of good cause, may elect not to impose the mandatory  
8 minimum imprisonment as required by this subdivision and may,  
9 under these circumstances, grant probation or order the suspension  
10 of the execution or imposition of the sentence.

11 (4) The Legislature finds and declares that these specified crimes  
12 merit special consideration when imposing a sentence so as to  
13 display society's condemnation for these crimes of violence upon  
14 victims with whom a close relationship has been formed.

15 (f) As used in this section:

16 (1) "Peace officer" means any person defined in Chapter 4.5  
17 (commencing with Section 830) of Title 3 of Part 2.

18 (2) "Emergency medical technician" means a person who is  
19 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses  
20 a valid certificate or license in accordance with the standards of  
21 Division 2.5 (commencing with Section 1797) of the Health and  
22 Safety Code.

23 (3) "Nurse" means a person who meets the standards of Division  
24 2.5 (commencing with Section 1797) of the Health and Safety  
25 Code.

26 (4) "Serious bodily injury" means a serious impairment of  
27 physical condition, including, but not limited to, the following:  
28 loss of consciousness; concussion; bone fracture; protracted loss  
29 or impairment of function of any bodily member or organ; a wound  
30 requiring extensive suturing; and serious disfigurement.

31 (5) "Injury" means any physical injury which requires  
32 professional medical treatment.

33 (6) "Custodial officer" means any person who has the  
34 responsibilities and duties described in Section 831 and who is  
35 employed by a law enforcement agency of any city or county or  
36 who performs those duties as a volunteer.

37 (7) "Lifeguard" means a person defined in paragraph (5) of  
38 subdivision (d) of Section 241.

1 (8) “Traffic officer” means any person employed by a city,  
2 county, or city and county to monitor and enforce state laws and  
3 local ordinances relating to parking and the operation of vehicles.

4 (9) “Animal control officer” means any person employed by a  
5 city, county, or city and county for purposes of enforcing animal  
6 control laws or regulations.

7 (10) “Dating relationship” means frequent, intimate associations  
8 primarily characterized by the expectation of affectional or sexual  
9 involvement independent of financial considerations.

10 (11) (A) “Code enforcement officer” means any person who  
11 is not described in Chapter 4.5 (commencing with Section 830) of  
12 Title 3 of Part 2 and who is employed by any governmental  
13 subdivision, public or quasi-public corporation, public agency,  
14 public service corporation, any town, city, county, or municipal  
15 corporation, whether incorporated or chartered, who has  
16 enforcement authority for health, safety, and welfare requirements,  
17 and whose duties include enforcement of any statute, rules,  
18 regulations, or standards, and who is authorized to issue citations,  
19 or file formal complaints.

20 (B) “Code enforcement officer” also includes any person who  
21 is employed by the Department of Housing and Community  
22 Development who has enforcement authority for health, safety,  
23 and welfare requirements pursuant to the Employee Housing Act  
24 (Part 1 (commencing with Section 17000) of Division 13 of the  
25 Health and Safety Code); the State Housing Law (Part 1.5  
26 (commencing with Section 17910) of Division 13 of the Health  
27 and Safety Code); the Manufactured Housing Act of 1980 (Part 2  
28 (commencing with Section 18000) of Division 13 of the Health  
29 and Safety Code); the Mobilehome Parks Act (Part 2.1  
30 (commencing with Section 18200) of Division 13 of the Health  
31 and Safety Code); and the Special Occupancy Parks Act (Part 2.3  
32 (commencing with Section 18860) of Division 13 of the Health  
33 and Safety Code).

34 (12) “Custody assistant” means any person who has the  
35 responsibilities and duties described in Section 831.7 and who is  
36 employed by a law enforcement agency of any city, county, or city  
37 ~~and county or who performs those duties as a volunteer.~~ *and*  
38 *county.*

39 (13) “Security officer” means any person who has the  
40 responsibilities and duties described in Section 831.4 and who is

1 employed by a law enforcement agency of any city, county, or city  
2 and county.

3 (g) It is the intent of the Legislature by amendments to this  
4 section at the 1981–82 and 1983–84 Regular Sessions to abrogate  
5 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and  
6 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior  
7 judicial interpretations of this section as they relate to criminal  
8 sanctions for battery on peace officers who are employed, on a  
9 part-time or casual basis, while wearing a police uniform as private  
10 security guards or patrolmen and to allow the exercise of peace  
11 officer powers concurrently with that employment.

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.